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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/003,098 01/06/98 KNOWLTON

E 16904-727

EXAMINER

QM12/0326

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SHAY, D  
ART UNIT

PAPER NUMBER

3739  
DATE MAILED:

03/26/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



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14

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☒ This application has been examined ☒ Responsive to communication filed on November 16, 2009 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____  |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1, 2, 8-12, 17-27, 67, & 70 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☒ Claims 3-7, 13-16, & 28-68 have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1, 2, 8-12, 17-27, 69, & 70 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit: 3739

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8-12 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 8-12 and 17-20 it is unclear what further manipulation is intended to be implied by reciting the type of energy delivery device or the type electrolytic media which is being employed.

Claims 1, 2, 8, 9, 17-27, 69, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand ('709) in combination with Storm, III. Sand ('709) teaches a method for contracting collagenous tissue by controlled heating with a reverse thermal gradient and notes the presence of collagen throughout the body including skin and muscle. Storm III teaches heating tissue using RF and microwave energy and a reverse thermal gradient, as well as controlling the temperature at the various levels of tissue and measuring the temperatures of the tissue. It would have been obvious to the artisan of ordinary skill to employ the method of Sand ('709) to tighten skin, since this is a well known condition remedied by cosmetic surgery and to employ the heating method of Storm, III to provide the heat to shrink the tissue, since this can controllably heat tissue beneath the skin surface, as taught by Storm III, and to contract subdermal, deep dermal, or subcutaneous tissue, since these would all result in tightening of the skin; it would be similarly obvious to tighten skin in the face, since the face is a common site for

Art Unit: 3739

cosmetic surgery including skin tightening; to use ultrasound as the energy, since this is equivalent to radiofrequency energy and microwave<sup>s</sup> and since ultrasound energy is notorious for its ability to heat tissue, official notice of which is hereby taken, thus producing a method such as claimed.

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand ('709) in combination with Storm III as applied to claim 1, 2, 17-27, 69, and 70 above, and further in view of Lax et al ('242). Lax et al ('242) teach applying an electrolytic media to the surface of the tissue to be heated. It would have been obvious to the artisan of ordinary skill to apply an electrolytic media to the surface of the tissue to be treated, since this provides a more even thermal gradient in the tissue, as taught by Lax et al ('242) thus producing a method such as claimed.

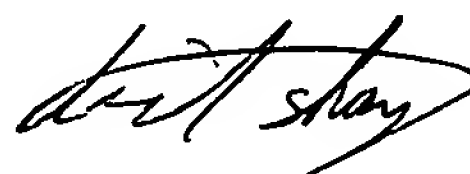
Applicant's arguments with respect to claims 1, 2, 8-12, 17-27 have been considered but are moot in view of the new ground(s) of rejection.

This is a continuing Prosecution Application of applicant's earlier Application No. 09/003,098. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3739

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308-2215.



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330